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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,737	07/06/2001	John David Whitenack	13DV13763	7008

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EXAMINER

O'CONNOR, GERALD J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 03/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/900,737

Applicant(s)

Whitenack et al.

Examiner

O'Connor

Art Unit

3627

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on July 28, 2004 (Election).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 9-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on October 2, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 20010706 and 20020325
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restriction*

1. Applicant's election with traverse of the invention of Group I, claims 1-8, in the reply filed July 28, 2004 is hereby acknowledged. The traversal is on the ground(s) that "requirements for election are not mandatory" (presumably meaning "mandatory for the examiner to issue"), and, that the two inventions "clearly are related," such that examination of both inventions would not be a serious burden on the examiner.
2. Applicant's arguments have been fully considered but are not found persuasive.
3. Regarding the argument that restriction by the examiner is not mandatory, applicant is correct, but the argument is irrelevant, as neither is restriction precluded.
4. Regarding the argument that the two inventions are related, the argument is irrelevant, as the Office action stated as much in setting forth the requirement. See § 2, lines 2 and 9 of the previous Office action, mailed July 15, 2004.

5. Regarding “serious burden” MPEP § 803 states, in part, under “Guidelines”:

A serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP § 808.02. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant.

6. As the examiner has indeed made such a *prima facie* showing of serious burden, based upon separate classification, as set forth in the requirement for restriction, mailed July 15, 2004, and as applicant has offered no “showing or evidence” in rebuttal to that conclusion, simply an opinion stating a contrary position, applicant’s arguments have been dismissed as merely spurious, amounting to simply a general allegation that a serious burden would not be imposed, without specifically pointing out how the language of the claims fails to comport with the explanation of separate classification provided by the examiner.

7. The restriction requirement is still deemed proper and is therefore made FINAL.

8. Claims 9-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a non-elected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction requirement in the reply filed July 28, 2004.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e)<sup>1</sup> the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

10. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Salvo et al. (US 6,341,271).

Salvo et al. disclose a web-based supply chain system for improving business productivity, said system comprising: a server configured with a database of business information, said server further configured with a plurality of user interfaces associated with business transactional applications, said server further configured for allowing a user to access

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<sup>1</sup> The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) apply to the examination of this application as the application being examined was (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) as amended by the AIPA (post-AIPA 35 U.S.C. 102(e)).

and retrieve said business transactional applications; at least one computer; and a network coupling said at least one computer to said server.

Regarding claim 2, the business information database of Salvo et al. includes information relevant to a plurality of supply chain processes, said server further configured to store and download data relevant to at least one of the supply chain processes.

Regarding claim 3, the supply chain processes of Salvo et al. includes at least one of demand planning, planning and scheduling, configuration management, order management, procurement, component manufacturing, assembly and test, logistics, and billing and collection.

Regarding claim 4, the server of Salvo et al. is further configured to allow a user to: set and input inventory requirements; and monitor a suppliers availability to ship inventory.

Regarding claim 5, the server of Salvo et al. is further configured to: provide data for buying and related activities including at least one of globalization, long-term agreements, and raw material purchasing; and integrate data from a plurality of purchase databases.

Regarding claims 6-8, the server of Salvo et al. is further configured to track, store, and dispose data relating to non-conformances (quality control); summarize historical performance data in pre-defined categories; integrate future demand schedules based on the summarized data; predict potential manufacturing problems based on the summarized data; maintain process capability data for pre-determined part characteristics; and, receive operational metrics requiring monitoring. See, for example, the description of control unit 114 in column 8, particularly in lines 35-50.

*Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to the disclosure.
12. Any inquiry concerning this communication, or earlier communications, should be directed to the examiner, **Jerry O'Connor**, whose telephone number is **(703) 305-1525**, and whose facsimile number is **(703) 746-3976**.

The examiner can normally be reached weekdays from 9:30 to 6:00.

PLEASE TAKE NOTICE that on April 14, 2005 the examiner's telephone and facsimile numbers will be changing, to (571) 272-6787 and (571) 273-6787, respectively.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Mr. Robert Olszewski, can be reached at (703) 308-5183, or, beginning April 14, 2005, at (571) 272-6788.

Official replies to this Office action may be submitted by any *one* of fax, mail, or hand delivery. **Faxed replies are preferred and should be directed to (703) 872-9306** (not changing). Mailed replies should be addressed to "Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450." Hand delivered replies should be delivered to the "Customer Service Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314."

GJOC

March 18, 2005



Gerald J. O'Connor  
Patent Examiner  
Group Art Unit 3627